

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CHARLES M. KUPPERMAN)	
)	
<i>Plaintiff,</i>)	
v.)	Civil Action No. 1:19-cv-3224 (RJL)
)	
UNITED STATES HOUSE OF)	
REPRESENTATIVES, <i>et al.</i>)	
)	
<i>Defendants.</i>)	
)	

**DEFENDANTS’ JOINT MOTION FOR CLARIFICATION OR, IN THE
ALTERNATIVE, MODIFICATION (WITHOUT EXTENSION)
OF THE BRIEFING SCHEDULE**

Defendants President Donald J. Trump, as well as the United States House of Representatives, Nancy Pelosi, Adam B. Schiff, Eliot L. Engel, and Carolyn B. Maloney (the House Defendants) respectfully request that this Court clarify or, in the alternative, modify, the current briefing schedule (*see* ECF No. 19). Defendants do not seek an extension of the briefing schedule or a postponement of the December 10, 2019, hearing. Rather, President Trump and the House Defendants seek to file one further brief each rather than two further briefs each. Specifically, Defendants respectfully request an Order providing that both groups of Defendants may each file one brief on December 4, 2019—addressing both the merits and responding to any opposition brief that Plaintiff Charles Kupperman may file on November 27, 2019—and need not file a separate brief on November 27, 2019 as well. Defendants believe this proposal will facilitate the Court’s expeditious resolution of this case by consolidating the parties’ key arguments into fewer briefs and ensuring the parties avoid the need to duplicate or repeat arguments across multiple filings.

Pursuant to Local Rule 7(m), counsel conferred with counsel for Dr. Kupperman, who takes no position on Defendants' motion. In further support of this motion, President Trump and the House Defendants state as follows:

1. On November 4, 2019, this Court issued an Order amending and clarifying the briefing schedule in this case. *See* ECF No. 19. The Court's Order provides that "[o]n or before November 14, 2019, defendants shall file any dispositive motions they intend to bring in this case . . . rais[ing] all arguments—including both arguments relating to the justiciability of plaintiff's claims and arguments relating to the merits of plaintiff's claims—that, they contend, provide a basis for resolving plaintiff's claims as a matter of law." *Id.* The Order further directs "all parties," by November 27, 2019, to "file any briefs in opposition, whether relating to justiciability or the merits," and permits Defendants, by December 4, 2019, to "file reply briefs in support of the grounds for resolving plaintiff's claims that were raised in their opening briefs."

2. President Trump and the House Defendants moved to dismiss Dr. Kupperman's Complaint on November 14 (President Trump also moved for summary judgment). *See* ECF No. 40 (President Trump's filing); ECF No. 41 (House Defendants' filing). Although the two groups of Defendants make different threshold arguments, both President Trump and the House Defendants agree that the Court lacks subject-matter jurisdiction and both agree more specifically that the case is moot. Consistent with the Court's Order, however, both President Trump and the House Defendants argued, in the alternative, that the Court should adopt their respective views of the merits if the Court reaches the merits (with President Trump arguing that Dr. Kupperman is absolutely immune from process compelling him to testify before Congress about his official duties, and the House Defendants arguing that this position has no basis in law).

3. At the time the Court issued its November 4 Order, the House Defendants had not yet withdrawn the subpoena to Dr. Kupperman and it was not yet clear that both Defendants would argue this case should be dismissed for lack of jurisdiction (and as moot in particular). Given Defendants' latest filings, Defendants are thus uncertain whether the existing briefing schedule is best read to require them to file "briefs in opposition" on November 27.

4. To the extent that the Order does impose such a requirement, Defendants respectfully submit that requiring them to file separate briefs on November 27 and December 4 would not meaningfully assist the Court in resolving the issues presented in this case. If Defendants are required to file separate briefs on November 27, such briefs could not respond to any jurisdictional arguments raised by Dr. Kupperman (since his brief, if any, is also due that day) and, as discussed above, Defendants have all argued that this Court lacks jurisdiction. And because all Defendants ultimately agree that the Court lacks jurisdiction, Defendants have conferred and do not intend to substantively contest each other's different grounds for urging dismissal for lack of jurisdiction—without either President Trump or the House Defendants conceding or acquiescing in the other's different grounds for that outcome. On December 4, by contrast, both groups of Defendants will be in a position to file respective briefs both responding to any arguments presented by Dr. Kupperman in support of the Court's jurisdiction in this case, as well as to respond to each other on the merits.

5. For similar reasons, permitting both groups of Defendants to each file one brief on December 4, rather than two further briefs each, would not prejudice Dr. Kupperman (whose arguments Defendants could not address in a November 27 filing in any event). And with this clarification or modification, the Court will still have a full set of briefs addressing both jurisdiction and the merits in advance of the December 10, 2019 hearing.

6. Defendants emphasize that they are mindful of—and fully appreciate—this Court’s view that this case “is a matter of great public interest and a matter of great urgency to the country,” and its “overarching concern is that we get all this done as soon as possible so we can move forward with a briefing schedule . . . and bring this case to a resolution.” Transcript of Oct. 31, 2019 Status Conference at 18. Defendants’ request would not delay resolution of this case in the slightest: if the request is granted, briefing on the parties’ dispositive motions would still close on December 4, 2019, and the December 10, 2019 hearing on the motions could go forward as scheduled. Defendants believe this proposal would, indeed, enhance the Court’s ability to quickly resolve this case by ensuring that the key arguments are presented in as few filings as possible, with maximum economy of verbiage.

7. Finally, if the Court grants the relief requested, Defendants further request that the Order specify that President Trump’s and the House Defendants’ respective briefs filed on December 4, 2019 may be up to 45 pages in length (though consistent with the above, Defendants will of course endeavor to present their arguments as succinctly as possible).

Accordingly, for the foregoing reasons, Defendants respectfully request that the Court issue an order clarifying—or in the alternative, modifying the schedule to provide—that they may each file one brief on December 4, 2019, and need not file briefs in opposition on November 27, 2019 as well.

Dated: November 18, 2019

Respectfully submitted,

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)	

[PROPOSED] ORDER

UPON CONSIDERATION of Defendants' Joint Motion for Clarification or, in the Alternative, Modification of the Briefing Schedule, it is hereby ORDERED that the motion is GRANTED;

It is FURTHER ORDERED that President Trump and the House Defendants may each file one further brief of up to 45 pages in length on December 4, 2019 and need not file separate briefs on or before November 27, 2019.

IT IS SO ORDERED.

Date: _____

HON. RICHARD J. LEON
United States District Judge